

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
AMANZE ANTOINE, :
Petitioner, :
: :
v. : :
: :
WARDEN, : :
Respondent. :
-----x

**ORDER ADOPTING REPORT
AND RECOMMENDATION**

20 CV 5130 (VB)

Briccetti, J.:

Before the Court is Magistrate Judge Andrew E. Krause’s Report and Recommendation (“R&R”), dated July 6, 2021 (Doc. #22), on respondent’s motion to dismiss as time-barred Amanze Antoine’s pro se petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. (Doc. #18).

The parties’ familiarity with the factual and procedural background of this case is presumed.

Magistrate Judge Krause recommended that respondent’s motion to dismiss be granted. For the reasons set forth below, the Court agrees. Accordingly, the R&R is adopted as the opinion of the Court, and the motion to dismiss is GRANTED.

I. Standard of Review

A district court reviewing a magistrate judge’s report and recommendation “may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1). Parties may raise objections to the magistrate judge’s report and recommendation, but they must be “specific[,] written,” and submitted within fourteen days after being served with a copy of the recommended disposition,” Fed. R. Civ. P. 72(b)(2); see also 28 U.S.C. § 636(b)(1), or within seventeen days if the parties are served by mail. See Fed R. Civ. P. 6(d).

The district court may adopt those portions of the recommended ruling to which no timely objections have been made, provided no clear error is apparent from the face of the record. See Wilds v. United Parcel Serv., Inc., 262 F. Supp. 2d 163, 169 (S.D.N.Y. 2003). The clearly erroneous standard also applies when a party makes only conclusory or general objections, or simply reiterates their original arguments. See Ortiz v. Barkley, 558 F. Supp. 2d 444, 451 (S.D.N.Y. 2008). As petitioner is proceeding pro se, this Court “will ‘read [his] supporting papers liberally, and . . . interpret them to raise the strongest arguments that they suggest.’” Id. (quoting Burgos v. Hopkins, 14 F.3d 787, 790 (2d Cir. 1994)).¹

II. Application

Magistrate Judge Krause issued the R&R on July 6, 2021, and the docket reflects that the R&R was mailed to petitioner that day. Accordingly, any objections to the R&R were due seventeen days later, on July 23, 2021.

Having received no objections as of July 30, 2021, the Court issued a sua sponte Order extending to August 23, 2021, petitioner’s time to file objections to the R&R. The Court warned in bold and underlined typeface that if petitioner failed to file objections by August 23, 2021, he would not be granted another opportunity to object to the R&R, and that the Court would decide in due course whether to adopt the R&R. The Court mailed this Order to petitioner at the address on the docket. (Doc. #23). To date, the Court has received no objections to the R&R.

Because petitioner has not objected to Magistrate Judge Krause’s thorough and well-reasoned R&R, the Court has reviewed the R&R for clear error. Finding no error, clear or otherwise, the Court adopts the R&R and grants respondent’s motion to dismiss the petition.

¹ Unless otherwise indicated, case quotations omit all internal citations, quotation marks, footnotes, and alterations.

CONCLUSION

The Court adopts the R&R in its entirety as the opinion of the Court.

The motion to dismiss is GRANTED.

The petition for a writ of habeas corpus is DISMISSED.

The Clerk is instructed to enter Judgment accordingly, terminate the motion (Doc. #18), and close this case.

As petitioner has not made a substantial showing of the denial of a constitutional right, a certificate of appealability will not issue. See 28 U.S.C. § 2253(c)(2); Love v. McCray, 413 F.3d 192, 195 (2d Cir. 2005).

The Court certifies, pursuant to 28 U.S.C. § 1915(a)(3), that any appeal from this Order would not be taken in good faith, and therefore in forma pauperis status is denied for the purpose of an appeal. See Coppedge v. United States, 369 U.S. 438, 444–45 (1962).

Chambers will mail a copy of this Memorandum Opinion and Order to petitioner at the address listed on the docket.

Dated: September 7, 2021
White Plains, NY

SO ORDERED:



Vincent L. Briccetti
United States District Judge